

BEFORE THE STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Request of Minnesota  
Power for a Certificate of Need for the Great  
Northern Transmission Line Project

**FIRST PREHEARING ORDER**

This matter came before Administrative Law Judge Ann O'Reilly for a Prehearing Conference on January 17, 2014.

Eric F. Swanson and David M. Aafedt, Winthrop & Weinstine, P.A., appeared on behalf of the Applicant Minnesota Power (Minnesota Power or Applicant).

Julia Anderson and Peter Madsen, Assistant Attorneys General, appeared on behalf of the Minnesota Department of Commerce Division of Energy Resources (DER).

Bill Storm, Environmental Review Manager, Department of Commerce, and Linda S. Jensen, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce Energy Environmental Research and Analysis (EERA).

Andrew Moratzka, Stoel Rives, LLP, appeared on behalf of the Large Power Intervenor (Large Power).

Christina Brusven, Fredrikson & Byron, appeared on behalf of Northern States Power Company d/b/a Xcel Energy, Otter Tail Power Company, and Missouri River Energy Services (collectively referred to as "Regional Utilities"). James Denniston also appeared on behalf of Xcel Energy.

Carol Overland, Legalectric, Inc., appeared on behalf of Intervenor Residents and Ratepayers Against Not-so-Great-Northern Transmission (RRANT).

Michael Kaluzniak and Tracy Smetana, staff of the Public Utilities Commission (Commission), were also present.

Based upon the submission of the parties and the hearing record,

**IT IS HEREBY ORDERED THAT:**

**Parties and Intervention**

1. In its January 8, 2014 Order Accepting Filing, Varying Time Lines, and Notice and Order for Hearing, the Commission designated the following entities as parties to the contested case: Minnesota Power and the DER.

2. On January 10, 2014, RRANT filed a Petition to Intervene. No party objected to the RRANT Petition within the time allotted by rule. Therefore, RRANT's Petition to Intervene is hereby **GRANTED**.

3. On January 16, 2014, Large Power filed a Petition to Intervene. At the January 17, 2014 Prehearing Conference both Minnesota Power and the Department of Commerce indicated they had no objection to Large Power's Petition. Therefore, Large Power's Petition to Intervene is hereby **GRANTED**.

4. Other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 with the Administrative Law Judge no later than 4:30 p.m. on **August 29, 2014**. Copies of the Petition to Intervene must be served upon all existing parties and the Commission. A Notice of Appearance must be filed with the Petition. Petitioners shall provide an electronic mail address on the Petition or Notice of Appearance. **Any intervenor will be held to the schedule set forth below and the schedule will not be modified to accommodate intervention. Therefore, parties intending to intervene should do so as early in the process as possible.**

5. Any objection to a Petition for Intervention shall be filed within seven (7) days of the filing of the Petition. See Minn. R. 1400.6200, subp. 2. The objection shall state the party's reasons for objection and shall be served upon the Administrative Law Judge, all existing parties, the petitioning party, and the Commission.

6. Any person who has not filed a Notice of Appearance **by February 3, 2014**, will be removed from the official service list on that date. To be placed on the service list after February 3, 2014, a party must file a Notice of Appearance. Interested members of the public who are not on the service list are invited to receive notifications through the "Subscribe to Dockets" feature of the Commission's E-Docket system.

7. Members of the public need not become parties in order to participate in this matter. The Administrative Law Judge will preside over public hearings on the matter and receive written comment from the public following those hearings as provided below.

### **Schedule**

8. The following schedule is adopted for the Environmental Review of the Great Northern Transmission Line and for the Certificate of Need proceedings, MPUC Docket No. E-015/CN-12-1163:

#### **Environmental Report (ER)**

DATE	EVENT	DESCRIPTION
<b>January 15, 2014</b>	Notice of ER Scoping Meetings	<ul style="list-style-type: none"><li>Commission &amp; EERA staff released Notice on Venue, and date and times for the ER Scoping meetings.</li></ul>
<b>February 11, 12, 13, 18, 19, &amp; 20, 2014</b>	ER Scoping Meetings	<ul style="list-style-type: none"><li>Commission &amp; EERA staff to hold joint Public Information &amp; ER Scoping Meetings.</li></ul>
<b>March 14, 2014</b>	ER Scoping Comment Period Ends	<ul style="list-style-type: none"><li>Opportunity for interested parties to submit written comments.</li></ul>
<b>March 28, 2014</b>	Scoping Decision Released	<ul style="list-style-type: none"><li>Department of Commerce Deputy Commissioner to Release the Scoping Decision.</li></ul>
<b>June 30, 2014</b>	ER Released	<ul style="list-style-type: none"><li>EERA to Release the ER and associated notices.</li></ul>

#### **Certificate of Need**

DATE	EVENT	DESCRIPTION
<b>August 10, 2014</b>	Minnesota Power Direct Testimony to be filed	
<b>August 29, 2014</b>	Deadline to Intervene	See Paragraph 4 above.
<b>September 19, 2014</b>	Other Parties' Direct Testimony to be filed	

DATE	EVENT	DESCRIPTION
<p><b>Weeks of October 6<sup>1</sup> and October 13, 2014</b></p> <p>Dates, times, and locations to be determined. Will occur in areas located in the proposed project route.</p> <p>Notice will be provided pursuant to rule and law prior to the hearings</p>	Public Hearings	<ul style="list-style-type: none"> <li>• ALJ introduction and opening remarks.</li> <li>• Commission staff – introduction on the process and the Commission’s role.</li> <li>• Applicant introduces application and record of other relevant items.</li> <li>• DER or EERA introduces into the record the procedural work to date, (e.g., notices on ER, Scoping meeting and decision, ER availability, and the Environmental Review).</li> <li>• Applicant answers questions about the Project.</li> <li>• EERA answers questions about the ER.</li> <li>• Public asks questions, makes comments.</li> </ul>
<b>October 24, 2014</b>	All Parties’ Rebuttal Testimony to be filed	
<b>November 7, 2014</b>	All Parties’ Surrebuttal Testimony to be filed	
<b>November 7, 2014</b>	Transcripts of Public Hearings to be filed and made available to the public.	<ul style="list-style-type: none"> <li>• Applicant to make Public Hearing transcripts available at various public libraries located in the Project area, including all areas where a public hearing was held.</li> <li>• Cost of hearing transcript copies to be paid by Applicant.</li> </ul>

<sup>1</sup> The Administrative Law Judge is unavailable for a public hearing on October 6, 2014. Accordingly, the public hearing schedule should not include a hearing on October 6, 2014. The Administrative Law Judge is available for the remainder of that week (October 7 – 10, 2014).

DATE	EVENT	DESCRIPTION
<b>November 12-14 and November 17-19, 2014</b>  Hearings to commence at 9:30 a.m. and will occur at the Commission office in St. Paul, MN	Contested Case Hearings	Anticipated Order of Testimony at Hearing:  1. Minnesota Power 2. Large Power 3. RRANT 4. Intervenor in order of intervention 5. Department of Commerce
<b>December 3, 2014</b>	Public Comment Period Closes	<ul style="list-style-type: none"> <li>All public comment to be filed.</li> </ul>
<b>December 4, 2014</b>	OAH to file all comments received.  Transcript of contested hearing to be filed and made available to the public.	<ul style="list-style-type: none"> <li>All hearing comments available through eDockets.</li> <li>Applicant to make Contested Case Hearing transcripts available at various public libraries located in the Project area, including all areas where a public hearing was held.</li> <li>Cost of transcript copies to be paid by Applicant.</li> </ul>

DATE	EVENT	DESCRIPTION
<b>December 19, 2014</b>	Initial Briefs due  Applicant's Proposed Findings of Facts, Conclusions of Law to be filed	<ul style="list-style-type: none"> <li>• All parties' Initial Arguments/Analysis based on analysis of the record through the close of the hearing and comment period.</li> <li>• Applicants respond to public written comments. Applicants submit proposed Findings of Fact and Conclusions. See Paragraph 33 below.</li> <li>• Dept. of Commerce responds to public written comments on ER and submits final evaluation.</li> </ul>
<b>January 16, 2015</b>	Reply Briefs due  Other Parties' Proposed Findings of Fact, Conclusions of Law to be filed.	<ul style="list-style-type: none"> <li>• Applicant replies to all Initial Briefs filed.</li> <li>• Dept. of Commerce and other parties' reply to Initial Briefs and Applicant's proposed Findings of Fact and Conclusions of Law. See Paragraph 33 below.</li> </ul>
<b>March 16, 2015</b>	Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation to be filed.	<ul style="list-style-type: none"> <li>• Findings of Facts, Conclusions of Law, and Recommendation on Certificate of Need Application</li> </ul>

## Discovery

9. A party may serve requests for information on any other party. All requests for information shall be made in writing by electronic mail. If expressly requested by another party, the requesting party shall follow the electronic mail message with a copy of the request sent by regular U.S. mail or other delivery service to all parties.

10. Information requests shall **not** be eFiled or served on the Administrative Law Judge or the Court Reporter. Additionally, Responses to information requests shall **not** be eFiled or served on the Administrative Law Judge or Court Reporter.

11. Other than a request by a government agency, to the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, the requesting party shall first seek approval of a Protective Order if such an Order has not already been adopted in this proceeding. A request containing such material shall only be between the requesting party and responding party, and the requesting party shall follow the electronic mail message with a public version of the request sent by regular U.S. Mail or other delivery service to all parties. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by electronic mail or other means after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday, is considered received on the next business day.

12. The party responding to the request shall provide the requested information to the requesting party within **eight (8) business days** of receipt of the information request. A business day does not include a weekend day or a Minnesota state holiday. In accordance with Minn. R. 1400.6100. subp. 1, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 p.m. on a business day, the following business day is also not counted in the calculation of the eight-day response period.

13. Public and Non-Public responses to information requests shall be submitted by electronic mail message. If expressly requested by another party, the responding party shall follow the electronic mail message with a copy of the response sent by regular U.S. mail or other delivery service. Any response received after 4:30 p.m. is considered to be received the following business day.

14. If the responding party is unable to send the response by electronic mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery service so that the requesting party receives the entire response, including any material designated as Trade Secret or Nonpublic, by the date due. Responding parties may utilize optical data storage (DVDs or CDs) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing

obligation to update and supplement information responses with any responsive material that may be subsequently discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

15. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of any Protective Order approved in this matter before providing the information.

16. If the responsive information cannot be supplied within eight (8) business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information. The responding party shall also attempt to work out a schedule of compliance with the requesting party.

17. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions shall be eFiled through the Edockets system. A courtesy copy of the motion papers shall be submitted to the Administrative Law Judge by electronic mail. Notice of such motions will be made by electronic mail. Motions to address discovery requests and responses are generally heard by telephone conference.

### **Prefiled Testimony**

18. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

19. A paper copy of prefiled testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

20. Prefiled testimony that is not offered into the record, or stricken portions of prefiled testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Any new affirmative matter that is not offered in reply to another party's rebuttal testimony and exhibits will not be allowed in surrebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three (3) days prior to the commencement of the evidentiary



hearing. Corrections to any prefiled testimony shall be identified and marked on the paper copy of the exhibit which is entered into the hearing record.

21. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any supplemental record data will be identified by the Administrative Law Judge as included in the official record.

### **Witnesses**

22. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: (a) Minnesota Power; (b) Large Power; (c) RRANT; (d) other Intervenor in the order of their intervention, and (e) the Department of Commerce (DER and/or EERA). Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

23. In the event that a witness must be scheduled for a day-certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.

24. Witnesses will be allowed ten (10) minutes in which to summarize their prefiled testimony. In order for a witness to include new information in his or her summary, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a motion with a showing of good cause for not having addressed that information in prefiled testimony.

25. Parties shall examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through one representative chosen by the party.

26. Except for good cause shown, objections by any party as to the qualifications of a witness or the admissibility of any portion of a witness' prefiled testimony are waived unless the objecting party states its objection by motion made to the Administrative Law Judge, no later than **4:30 p.m. on November 10, 2014.**

### **Filing of Documents** **(Excluding Information Requests and Responses)**

27. Original documents shall be filed using the Commission's eDockets eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's standards. In any instance where the eFiling system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

28. An oversized exhibit may be received into the hearing record, with approval of the judge, provided that a duplicate original of the exhibit, conforming to the standards of Minn. R. 1400.5275, is submitted into the record.

29. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three (3) business days thereafter.

30. The parties agree that eFiling through the eDockets system shall constitute service in this matter. Anything that cannot be filed through eFiling shall be served by U.S. mail or delivered to the persons indicated on the official service list by the date the document is required to be served. The list will be revised as necessary by the Office of Administrative Hearings.

31. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

32. If Trade Secret or Nonpublic Data is filed in this proceeding, a Protective Order will be issued that will govern access to such information. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures are available from the Commission's website at: <http://www.puc.state.mn.us/puc/energyfacilities/data-practices/index.html>.

33. A courtesy copy of all briefs, motions, memoranda, and proposed findings shall be sent to the Administrative Law Judge by electronic mail. Proposed findings should also be sent by electronic mail to the judge and copied on all parties in a Microsoft Word format that permits revision. It is helpful if parties other than the Applicant submit proposed findings in a red-lined version of Applicant's proposed findings, if possible.

34. The Applicant shall provide the Administrative Law Judge with a paper copy (in color) of the Certificate of Need Application and the EERA shall provide the Administrative Law Judge with a paper copy (in color) of the Environmental Report.

Dated: January 29, 2014

s/Ann C. O'Reilly  
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ANN C. O'REILLY  
Administrative Law Judge